LIBRARY
SUPREME COURT, U. S.

Office Supreme Court, U.S.
FILED
MAR 6 1962
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 773

LEVERT H. TAYLOR, HAROLD L. BETHUNE, DELORES McGINNIE, MARIE McGINNIE, DAVID JAMES DENNIS and HARRY BLAKE,

Petitioners,

v.

STATE OF LOUISIANA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

CARL RACHLIN,
JUDITH P. VLADECK,
280 Broadway,
New York 7, N. Y.
Attorneys for Petitioners.

JESSE N. STONE, JR.,
Shreveport, Louisiana,
of Counsel.

INDEX

	PAGE
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statutes Involved	3
Statement	4
How Federal Questions Were Raised	8
Reasons for Granting the Writ	9
Conflict With Applicable Decisions of This Court	11
Importance of the Federal Questions	12
Conclusion	14
Appendix A—Revised Statutes of Louisiana, §14:103.1	15
Appendix B—Opinion of Court, 1st Judicial District of Caddo Parish	17
Opinion of Supreme Court at Louisiana	19
Motion to Quash	20
Opinion on Motion to Quash	23
Motion in Arrest of Judgment	26
Motion for New Trial	30

CITATIONS

Cases:

Bailey v. Alabama, 219 U. S. 219	13
Bailey v. Patterson, — U. S. —, Feb. 26, 1962	11
Boynton v. Virginia, 364 U. S. 454 (1960)	11
Browder v. Gayle, 142 F. Supp. 707 (M. D. Ala 1956) affirmed 352 U. S. 903	11

PAGE

Cantwell v. Connecticut, 310 U. S. 296 (1940) 12

Cooper v. Aaron, 358 U. S. 1 (1958) 12

De Jonge v. Oregon, 299 U. S. 353 (1937) 12

Edwards v. California, 314 U. S. 160 (1941) 11

Garner v. Louisiana, 368 U. S. 157 13

Henderson v. U. S., 339 U. S. 816 (1950) 11

Johnson v. Maryland, 254 U. S. 51 (1920) 11

Kent v. Dulles, 357 U. S. 116 (1958) 11

McCulloch v. Maryland, 4 Wheat 316 (1819) 11

Mitchell v. U. S., 313 U. S. 80 (1941) 11

Morgan v. Virginia, 328 U. S. 373 (1946) 11

N. A. A. C. P. v. Alabama, ex rel. Patterson, 357 U. S. 449 (1958) 11

Rockwell v. Morris, 10 N. Y. 2d 749, cert. denied 368 U. S. 913 (1962) 12

Sellers v. Johnson, 163 F. 2d 877 (C. A. 8. 1947), cert. denied 332 U. S. 851 12

Strauder v. West Virginia, 100 U. S. 303 (1880) 12

Thompson v. City of Louisville, 362 U. S. 199 13

Yick Wo v. Hopkins, 118 U. S. 356 (1886) 12

STATUTES:

49 U. S. C. 316(d) 11

49 U. S. C. 3(1) 11

49 U. S. C. 1374 11

Louisiana Constitution, Article VII, Sec. 10 ..... 8fn

Louisiana Revised Statutes, §14:103.1 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. .....

LEVERT H. TAYLOR, HAROLD L. BETHUNE, DELORES McGINNIE, MARIE McGINNIE, DAVID JAMES DENNIS and HARRY BLAKE,

Petitioners,

v.

STATE OF LOUISIANA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

Petitioners respectfully pray that a writ of certiorari issue to review the decree of the Supreme Court of the State of Louisiana entered in the above-entitled cause on October 11, 1961 which denied petitioners' Application for Writs of Mandamus, Certiorari and Prohibition, thus affirming the verdicts of conviction rendered by the First Judicial District Court of Caddo Parish, Louisiana (herein called the District Court), on August 21, 1961, and entered on August 23, 1961.

OPINIONS BELOW

The District Court rendered no written opinion. Its oral opinion is part of the Record (R. 37-38), and is printed

in Appendix B hereto, *infra*, pp. 17-18. The memorandum opinion of the Louisiana Supreme Court is unreported and appears in Appendix B hereto, *infra*, p. 19.

JURISDICTION

The verdict of the District Court was rendered on August 21, 1961, and entered on August 23, 1961. Petitioners' motions for a new trial and in arrest of judgment were overruled and sentences were imposed on the latter date. Petitioners' Application to the Supreme Court of the State of Louisiana for Writs of Mandamus, Certiorari and Prohibition was denied on October 11, 1961. Petitioners thereafter on October 26, 1961 filed application for rehearing and on November 6, 1961, the Louisiana Supreme Court refused to consider the said application.

On January 8, 1962, Mr. Justice Hugo L. Black extended the time for filing this petition to and including March 10, 1962. The jurisdiction of this Court is based on 28 U. S. C. §1257(3).

QUESTIONS PRESENTED

The petitioners were convicted of disturbing the peace although there was a total absence of evidence of any misconduct on their part. Their convictions were based upon a holding by the trial court that the mere presence of Negroes in a waiting room customarily reserved for white persons in a Shreveport, Louisiana bus station, is sufficient evidence of intent to breach the peace.

The Federal questions are:

1. Whether the convictions of petitioners, unsupported by any evidence of guilt, constitute wholly arbitrary official action and thereby violate the due process clause of the Fourteenth Amendment?

2. Whether the imposition of criminal penalties so as to limit the right of Negro passengers to free and unimpeded interstate travel violates the Interstate Commerce Act, and the due process clause of the Fourteenth Amendment?

3. Whether the convictions of petitioners, because they were *Negroes* in a "white" waiting room, is classification by race in violation of the equal protection clause of the Fourteenth Amendment?

4. Whether a state may so employ breach of peace statutes as to perpetuate racial discrimination, otherwise held violative of the 14th Amendment?

STATUTES INVOLVED

Petitioners were convicted of disturbing the peace under §14:103.1 of the Revised Statutes of Louisiana, printed in Appendix A, *infra*, p. 15.

STATEMENT[1]

The petitioners were arrested on August 4, 1961. On that morning petitioners went by automobile to the Continental Trailways Bus Station in Shreveport, Louisiana. Continental Trailways is an interstate bus carrier. Petitioners David James Dennis and Harry Blake remained in the automobile; neither Dennis nor Blake entered the bus station at any time on that morning (T. 14, 45, 138). The other four petitioners went into the bus station waiting room customarily reserved for white people. All of the petitioners are Negro. Several police officers were present in the bus station at the time the four petitioners entered, including the Chief of Police (T. 127). Testimony indicated that anonymous phone calls had warned of trouble to be expected at the station (T. 17).

The Chief of Police of the City of Shreveport, Harvey D. Teasley, approached the four petitioners and asked them why they were in the station. The petitioners stated that they were waiting for a bus to Jackson, Mississippi, and wanted travel information. The Chief of Police directed them to the information counter in the other waiting room, designated as the colored waiting room. Upon their failure to go to the colored waiting room, Chief Teasley ordered them to leave or be arrested. The four petitioners did not leave and were arrested (T. 180-192, 229-231).

---

[1] References to the Record are designated by the symbol "R". Although a transcript of the trial was made by an official court stenographer, in accordance with Louisiana practice it was not part of the Record before the Louisiana Supreme Court. To supplement the Record the transcript is submitted with this petition and references to it are designated by the symbol "T".

There was no evidence of any misconduct on the part of petitioners. The prosecution offered evidence in an effort to show that when the four Negroes walked into the station, people became restless and some onlookers climbed onto seats (T. 76, 79, 89, 123). There was no evidence of violence or disorder. Police testimony consistently was the same; petitioners were quiet, orderly and polite (T. 21, 22, 47, 57).

Petitioners Blake and Dennis were arrested about two blocks away from the bus station and all testimony showed that they had not been in the bus station on that day (T. 38, 42, 44).

No one else was arrested, and so far as appears, none of the other occupants of the station was interrogated.

Petitioners were charged with disturbing the peace. The Bill of Information (R. 21) alleged that they did "with intent to provoke a breach of the peace, and under circumstances such that a breach of the peace might be occasioned thereby, crowd and congregate with others in a public place, to wit, inside the . . . Bus Station . . . and did fail and refuse to disperse and move on when ordered to do so by a law enforcement officer . . .."

Petitioners' motion for a bill of particulars was denied. The said motion had sought to require the setting forth of sufficient detail of the charged offense so as to permit petitioners to prepare a defense. Basically, the motion asked that petitioners be advised of the manner in which they were alleged to have congregated or crowded and as to the specific breach of the peace that could have been reasonably occasioned as a result of their acts (R. 27-29). The Trial Court denied the motion stating that the "bill

of information gave all of the particulars pertinent to the charge against them" (R. 16).

Petitioners thereafter filed a motion to quash and sought leave to adduce evidence in support of the motion which the Trial Court denied (R. 30-31).

The petitioners were then, on August 11, 1961, arraigned and each pleaded "not guilty." Following the trial before Judge John A. Dixon, Jr., petitioners moved for a directed verdict as to the petitioners, David James Dennis and Harry Blake, upon the ground that there had been no evidence adduced which indicated that either of the said two petitioners had been present in the bus station at the time the alleged incident took place, and that they had been charged as principals, the motion was denied (T. 203).

A further motion for directed verdict as to all petitioners was denied. The Court in denying the said motion made the following statement:

> "The motion for a directed verdict is overruled. I believe the State has shown a prima facie case. Even a person so far removed from this scene as United States Attorney General Kennedy recognizes that when colored people go into a white waiting room in a place like Shreveport, they have committed an act that is calculated to disturb and alarm the public." (R. 37)

The Court thereupon found all of the petitioners guilty. A motion for a new trial was made (R. 40) and denied and sentences were imposed upon petitioners.

The Court in imposing sentence, made the following statement (T. 251-252):

> ". . . these sentences are going to be imposed as I think the prosecution has been motivated, and the arrest has been motivated, not because of what you think or the fact that your beliefs are different from the beliefs of white people generally in this area, and that, although you certainly cannot separate this case from the segregation problem, these sentences are motivated, I think, by a desire on the part of the Court to do what it can to maintain the relatively harmonious relationships in this community that have existed in the past between the races and to prevent incidents in Shreveport that can have hardly any other conclusion except the destruction of the relatively harmonious relationships that have existed here."

Levert Taylor was sentenced to pay a fine of $150.00 and costs or, in default thereof, to serve 30 days in jail, and to serve 30 days in jail; Delores McGinnie and Marie McGinnie were sentenced to pay a fine of $150.00 and costs or, in default thereof, to serve 30 days in jail, and to serve 15 days in jail. The Court ordered that the 15 days in jail be suspended upon good behavior. Harold L. Bethune was sentenced to pay a fine of $200.00 and costs or, in default thereof, to serve 45 days in jail, and to serve 3 months in jail.

Although the petitioners Dennis and Blake were proven not to have been in the station, they were convicted "as principals" and the heaviest sentences imposed upon them. Dennis was sentenced to pay a fine of $200.00 and costs or, in default thereof, to serve 45 days in jail, and to serve 3 months in jail; and Blake was sentenced to pay a fine of $200.00 and costs or, in default thereof, to serve 45 days in jail, and to serve 30 days in jail.

The petitioners sought review of the judgments of conviction and sentences by the Louisiana State Supreme Court. Under Louisiana law no appeal procedure was available, since no sentence was for longer than 6 months and no fine over $300.00. Review was sought, however, under the general supervisory jurisdiction of the Supreme Court.[2] The Louisiana Supreme Court held that the showing made by petitioners did not justify the exercise of supervisory jurisdiction.

HOW FEDERAL QUESTIONS WERE RAISED

The Federal questions here presented were specifically raised in the District Court by written motion to quash prior to arraignment of petitioners (R. 30, 31), by oral motions for directed verdicts, again by written motion in arrest of judgment (R. 33, 34), and still again by written motion for a new trial (R. 40, 41). Each of the said motions was overruled; the denial of the motion to quash was accompanied by a written opinion (R. 19, 20), and the denial of the motion for a directed verdict by an oral opinion (R. 37). The written motions and opinions referred to herein appear in Appendix B, *infra* pp. 20-33. In petitioners' application to the Louisiana State Supreme Court for Writs of Mandamus, Certiorari and Prohibition, specific reference was again made to the Federal questions sought to be reviewed (R. 9-14).

---

[2] Article VII Sec. 10, Louisiana Constitution, provides for the general supervisory jurisdiction of the Supreme Court over all inferior courts. No appeal is available in criminal cases unless a sentence of more than 6 months or a fine of more than $300.00 has been imposed by the lower court.

Petitioners' Federal claims were thus made at the earliest opportunity and were renewed at each stage of the proceeding below.

REASONS FOR GRANTING THE WRIT

As a preliminary matter it must be stated again that the convictions were based on no evidence whatsoever beyond the presence of four of the petitioners in a white waiting room. That the two petitioners, Dennis and Blake, were not even present in the station was conceded by the State (T. 34-35). All of the State's witnesses testified to the fact that petitioners were orderly, polite and spoke only to one another or to the police officers. Whatever fragmentary testimony there was of disorder concerned the conduct of persons in the station other than petitioners. Even under the broad and vaguely worded legislative prohibition against disturbing the peace, there was not a shadow of evidence that could have justified the convictions, either of the four who were at the station, or of the two who according to the prosecution aided and abetted them.

It was not disturbing the peace for petitioners to wait for a bus in the Continental Trailways Bus Station. It was not disturbing the peace for the petitioners to seek travel information in the "white" waiting room of the bus station. It was not disturbing the peace for petitioners to politely advise the police of their unwillingness to move into the waiting room reserved for Negroes.

Nor can evidence as to the membership in or participation by petitioners in the efforts of the Congress of Racial

Equality, an organization devoted to the testing and elimination of segregation in interstate travel, without more, constitute proof of intent to disturb the peace (T. 156, 160, 165).

The convictions here suggest that Negroes cannot wait for a bus in a public bus station without the jeopardy of arrest. They also suggest that Negroes so arrested are stripped of the presumption of innocence, and although they prove beyond any doubt that the charges against them are unwarranted, they will nevertheless be found guilty. Thus, the decisions of the District Court, buttressed by the Louisiana Supreme Court's refusal to review, are not simply rulings that petitioners must pay fines or serve jail sentences; they are virtually a warning to all Negroes in the State of Louisiana that they exercise their constitutional rights to travel and assemble upon pain of criminal punishment if their acts conflict with the mores of their local community.

This petition is therefore based on more than the fact that the convictions were unsupported by evidence. It is based also on the manifest purpose of these convictions, that of preserving racial segregation under the pretense of preserving the peace. The reasons why the writ should be granted are stated below.

CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT

Free and unimpeded travel has been held to be a natural, or constitutionally protected right. *Kent* v. *Dulles*, 357 U. S. 116 (1958); *Edwards* v. *California*, 314 U. S. 160, 172 (1941). The right of interstate bus travellers not to be subjected to discrimination and segregation is well and long established. *Morgan* v. *Virginia*, 328 U. S. 373 (1946); *Henderson* v. *United States*, 339 U. S. 816 (1950); *Mitchell* v. *United States*, 313 U. S. 80, 97 (1941); *Boynton* v. *Virginia*, 364 U. S. 454 (1960); *Gayle* v. *Browder*, 352 U. S. 903; *Bailey* v. *Patterson*, — U. S. —, Feb. 26, 1962.

Interference with these rights is not only proscribed by the due process and equal protection clauses of the Constitution, but also violates Article 1, Sec. 8, of the Constitution of the United States and the laws of Congress and the regulations of the Interstate Commerce Commission passed and adoped pursuant thereto. 49 U. S. C. 316(d); 49 U. S. C. 3(1); 49 U. S. C. 1374, *Mitchell* v. *U. S.*, and *Henderson* v. *U. S.*, both *supra*.

That the existence of a Federal right necessarily implies a federally protected immunity against harassment, reprisal or punishment for the exercise of that right is too well settled for argument. *McCulloch* v. *Maryland*, 4 Wheat 316 (1819); *Johnson* v. *Maryland*, 254 U. S. 51 (1920), and cases there cited; *N. A. A. C. P.* v. *Alabama, ex rel. Patterson*, 357 U. S. 449 (1958).

The question then is whether the exercise of a right may be limited because it is expected to arouse violence in others.

The law on this issue is settled. Those who exercise constitutionally protected rights can neither be punished nor stopped unless they, themselves, are guilty of affirmative acts of wrongdoing. *Cooper* v. *Aaron*, 358 U. S. 1 (1958); *Sellers* v. *Johnson*, 163 F. 2d 877 (C. A. 8, 1947) *cert. denied* 332 U. S. 851; *Rockwell* v. *Morris*, 10 N. Y. 2d, 749, *cert. denied* 368 U. S. 913 (1962)

If the right involved here was not that of travel, but examined only in the context of the testing of legislation by peaceful assembly or demonstration, the law is equally clear. Such rights are protected by the 1st Amendment. See, *e.g.*, *De Jonge* v. *Oregon*, 299 U. S. 353 (1937); *Cantwell* v. *Connecticut*, 310 U. S. 296, 306 (1940).

IMPORTANCE OF THE FEDERAL QUESTIONS

From the earliest Court interpretations of the Fourteenth Amendment to the present, there has been a consistent adherence to the view that it prohibits discrimination by the States. *Strauder* v. *West Virginia*, 100 U. S. 303 (1880). The law is clear that such discrimination is equally repugnant whether it takes the form of legislation or unequal administration of the law by public authority. As this Court said in *Yick Wo* v. *Hopkins*, 118 U. S. 356 (1886):

> "Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justices is still within the prohibition of the Constitution . . ."

The basic question here, however, is whether a State may, under cloak of protecting against breach of the peace or guarding the public safety, practice such discrimination. The power of the police to effect summary arrests where breach of peace appears imminent is not questioned. There must, however, be safeguards against the use of such power to enforce discriminatory State policies which are not acceptable in the form of legislative or administrative acts. Where a State affirmatively sanctions police incursion into the area of protected activity, it is running counter to the guarantees of the Fourteenth Amendment. Such summary official action must be restrained. *Garner* v. *Louisiana*, 368 U. S. 157, and see *Thompson* v. *City of Louisville*, 362 U. S. 199.

The denial of due process by the arrests here is evident. White persons would not be and were not arrested for their presence in the same place at the time time. Nor were they arrested for their acts, since the only evidence of any disorder was as to others in the station. Neither can it be said that the trial of petitioners satisfied the due process requirements, their convictions being devoid of evidence to support them. Perhaps even more significantly, upon their trial they were stripped by the Court's declared attitude as quoted earlier, of the presumption of innocence. *Bailey* v. *Alabama*, 219 U. S. 219.

The gravity of the threat implicit here is plain. This is not an action involving a dispassionate effort on the part of the police to prevent persons who they consider dangerous to the peace from frequenting public places. This case involves a broad threat to all Negroes that the State of Louisiana will use the police power and the threat of criminal penalty to perpetuate practices outlawed by the Constitution and the laws of the United States.

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

CARL RACHLIN,
JUDITH P. VLADECK,
280 Broadway,
New York 7, N. Y.
Attorneys for Petitioners.

JESSE N. STONE, JR.,
Shreveport, Louisiana,
of Counsel.

APPENDIX A

Revised Statutes of the State of Louisiana

14:103.1. DISTURBING THE PEACE.

A. Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby:

(1) crowds or congregates with others providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions, in or upon a shore protection structure or structures, or a public street or public highway, or upon a public sidewalk, or any other public place or building, or in any hotel, motel, store, restaurant, lunch counter, cafeteria, sandwich shop, motion picture theatre, drive-in, beauty parlor, swimming pool area, or any sports or recreational area or place, or any other place of business engaged in selling or serving members of the public, or in or around any free entrance to any such place of business or public building, or to any building owned by another individual, or a corporation, or a partnership or an association, and who fails or refuses to disperse and move on, or disperse or move on, when ordered so to do by any law enforcement officer of any municipality, or parish, in which such act or acts are committed or by any law enforcement officer of the state of Louisiana, or any other authorized person or

(2) insults or makes rude or obscene remarks or gestures, or uses profane language, or physical acts, or indecent proposals to or toward another or others, or disturbs or obstructs or interferes with another or others, or

(3) while in or on any public bus, taxicab, boat, ferry or other water craft or other vehicle engaged in transporting members of the public for a fare or charge, causes a disturbance or does or says, respectively, any of the matters or things mentioned in subsection (2) supra, to, toward, or in the presence of any other passenger on said vehicle, or any person outside of said vehicle or in the process of boarding or departing from said vehicle, or any employee engaged in and about the operation of such vehicle, or

(4) refuses to leave the premises of another when requested so to do by any owner, lessee, or any employee thereof, shall be guilty of disturbing the peace.

B. Whoever commits the crime of disturbing the peace as defined herein shall be punished by a fine of not more than two hundred dollars, or imprisonment in the parish jail for not more than four months, or by both such fine and imprisonment.

Section 2. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions, items or applications of this Act which can be given effect without the invalid provisions, items or application and to this end the provisions of this Act are hereby declared severable.

Section 3. All laws or parts of laws in conflict herewith are hereby repealed.

Section 4. The necessity for the immediate passage of this Act having been certified by the Governor to the Legislature while in session, in accordance with Section 27 of Article III of the Constitution of Louisiana, this Act shall become effective immediately upon approval by the Governor".

Approved by Gov.: June 22, 1960.

APPENDIX B

Opinion of First Judicial Court of Caddo Parish

No. 57,562

STATE OF LOUISIANA VS. LEVERT H. TAYLOR, DELORES McGINNIE, MARIE McGINNIE, HAROLD L. BETHUNE, DAVID JAMES DENNIS and HARRY BLAKE	In the First Judicial District Court, Criminal Section, Parish of Caddo, State of Louisiana

The Court: There is not a person in this court room who does not know that if white persons go into the colored waiting room in Shreveport or if colored persons go into the white waiting room at the bus station in Shreveport that a breach of the peace is likely and eminent and probable.

The police department and sheriff's department of this city and state are to be commended for taking prompt action. Other police and other cities and towns have been highly criticized in many places for failing to take action when such an incident as this was about to occur.

In this case the attempt, I think, to create a disturbance was planned and deliberate. Evidence uncontradicted shows that there were meetings at which these defendants perhaps with others planned this excursion, and that one of the defendants, Dennis, called the police and alerted them. He could have only had one of two purposes, or maybe both, for such a call. One was publicity, and the other was pro-

tection. He received the protection. I think the question here is not whether or not the police have the right or the authority to direct people who are doing something that is lawful to move on. The question here is purely whether or not these people congregated intending to provoke a breach of the peace, congregated with the intent to do something that was calculated to disturb the peace.

There is absoluely no question about it. The defense has admitted, or offered to admit from time to time that these colored people did go into the white waiting room at the bus station. The Court does not believe the testimony of Blake and Bethune when they say they did not know what was planned or what was about to happen or what was going to transpire.

I find Blake as a principal and we find all the defendants guilty.

• • •

Opinion of Louisiana Supreme Court

SUPREME COURT OF LOUISIANA
New Orleans

STATE OF LOUISIANA	October 11, 1961
v.	
LEVERT H. TAYLOR ET AL.	No. 45,841

In re: Levert H. Taylor et al applying for writs of mandamus, certiorari and prohibition

---

Writ refused. The showing made does not justify the exercise of our supervisory jurisdiction.

/s/ FWS
/s/ JBF
/s/ JBH
/s/ FWH
/s/ ElIMcC
/s/ WBH
/s/ JWS

• • •

Motion to Quash Bill of Information

STATE OF LOUISIANA versus LEVERT H. TAYLOR, DELORES MCGINNIE, MARIE MCGINNIE, HAROLD L. BETHUME, DAVID JAMES DENNIS and HARRY BLAKE	Number: 57,562 First Judicial District Court Caddo Parish, Louisiana

Now into court come LeVert H. Taylor, Delores McGinnie, Marie McGinnie, Harold L. Bethume, David James Dennis and Harry Blake, appearing herein through their undersigned counsel, and reserving all rights under any and all motions previously filed herein as well as the right to file additional motions including those normally filed to arraignment, and with respect, show:

1.

That the Bill of Information filed herein against them should be quashed for the following reasons, to wit:

1.

That the statute defining the offense with which your petitioners are charged herein should be quashed for lack of clarity in that the language of the statute lacks the clarity required by Article one Section ten of the Louisiana Constitution and the Sixth Amendment of the Constitution of the United States as it fixes no ascertainable standard of guilt that the defendants or would be defendants could be aware or appraised of prior to commission of the act or acts and prior to a determination by the courts, and particularly

in reference to the words "crowd and congregates with others."

2.

The statute violates the defendants' rights to peaceably assemble as guaranteed by the First Amendment of the Constitution of the United States and of Article one Section five of the Constitution of the state of Louisiana.

3.

The statute under which your petitioners are charged violates the equal protection clauses of the Fourteenth Amendment to the Constitution of the United States in that it exacts a penalty from these defendants not exacted from Labor Unions and other persons specifically exempted under the statute.

4.

The statute under which petitioners are charged violates the Due Process and Equal Protection clauses of the Fourteenth Amendment to the Constitution of the United States in that it has for its purpose furthering and maintaining the states policy of forced segregation in the state of Louisiana at the places designated in the statute, or in the alternative, and the alternative only it is being administered in a fashion so as to deny members of the Negro Race rights secured to them under the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States by exacting of the criminal penalties for seeking to use facilities not specifically designated for members of their race.

5.

That in the alternative and in the alternative only this statute makes it possible to exact a penalty from these particular defendants merely because of their attempt to use facilities in interstate commerce in keeping with their rights under the Fourteenth Amendment to the Constitution of the United States and particularly the Equal Protection and Due Process Clauses thereof

WHEREFORE, PETITIONERS PRAY that this motion to Quash be sustained and that the Bill of Information filed herein against them be Quashed and that the charges be dismissed and that they be restored to their liberty forthwith and that they be relieved from further prosecution herein under the statute complained, and for all orders necessary and for general and equitable relief.

/s/ JESSE N. STONE, JR.
JESSE N. STONE, JR.
854½ Texas Avenue
Shreveport, Louisiana
Attorney for Petitioners

Opinion of Judge John J. O'Neal on Motion to Quash

STATE OF LOUISIANA v. LEVERT H. TAYLOR, ET AL.	Number: 57,562 First Judicial District Court Caddo Parish, Louisiana

The defendants in the above and entitled cause, being six in number, charged under R. S. 14:103.1 with disturbing the peace, filed a motion to quash the bill of information on five grounds, which motion has been argued and submitted.

(1) It is alleged that the statute defining the offense under which the defendants are charged should be quashed for lack of clarity, as the statute lacks the clarity required by the Federal and State constitutions, in that there is no standard to apprise the defendants what is prohibited, particularly in reference to the words "crowd and congregates with others."

We see no merit to this contention. Two or more make a "crowd." We think that when the statute prohibits a person congregating with others, etc., the words used are of common import, and such person can clearly understand same. Furthermore, the charge filed herein charges six persons with having "congregated."

(2) The second point is without merit as the statute does not prohibit persons from "peaceable assembly." The statute prohibits breaches of the peace as defined therein.

(3) The third ground of the motion to quash alleges that the defendants are denied the "equal protection"

clause of the 14th Amendment to the Constitution of the United States, for the reason that labor unions are exempted under the statute.

Labor unions are regulated by a different law and, as we understand the jurisprudence, reasonable exceptions may be made in a statute without rendering the statute unconstitutional.

(4) Defendants allege that the statute under which defendants are charged violates the "due process" and "equal protection" clauses of the 14th Amendment to the Constitution of the United States, in that it has for its purpose furthering and maintaining the State's policy of forced segregation in the state of Louisiana at the places designated in the statute; and in the alternative, that it is being administered in a fashion to deny members of the negro race rights accorded to them under the "equal protection" and "due process" clauses of the Constitution, by exacting of the (defendants) criminal penalties for seeking to use facilities not specifically designated for members of their race.

The statute applies to all persons, whether white or colored, and has no reference whatever to the segregation of the races. While the statute may be used to prosecute those who attempt to individually enforce desegregation or violate segregation statutes, it applies to white as well as to colored people and (so far as we recall) the statute applies to places not covered by any segregation statute. It prohibits persons congregating with others with the intent to provoke a breach of the peace . . . in or upon . . . a public street or public highway or upon a public sidewalk.

(5) The allegations contained in paragraph five are inapplicable to the present law, as the segregation statutes are not involved in this proceeding. The complaint in this section might be applicable to a statute providing for a segregation of the races if the defendants were charged with violating such law. The defendants are not charged with violating the segregation laws. They are charged with disturbing the peace. A person may have the legal right to go to his church or walk upon the streets, but he cannot do it if he breaches the peace in so doing.

Under the terms of the statute, if six white persons did the same thing that these six defendants were charged with having done, they would be subject to prosecution for the same offense.

For the reasons assigned the motion to quash is overruled.

/s/ JOHN J. O'NEAL
District Judge

(Seal)

Motion in Arrest of Judgment

STATE OF LOUISIANA versus LEVERT H. TAYLOR, DELORES McGINNIE, MARIE McGINNIE, HAROLD L. BETHUME, DAVID JAMES DENNIS and HARRY BLAKE	Number: 57,562 First Judicial District Court Caddo Parish, Louisiana

Now into Court, through their undersigned counsel, come all of the defendants herein, reserving all rights under any and all motions and/or exceptions and under all Bills of Exceptions previously reserved, and with respect moves the court to arrest, nullify and set aside the judgment rendered herein against them for the following reasons patent upon the face of the record, to wit:

1.

That the statute under which these defendants are charged and the Bill of Information charging them in this cause were both so vague and indefinite that the defendants were not sufficiently apprised of the charges against them, and hence could not adequately prepare their defense, and that despite the fact that they filed a Motion for a Bill of Particulars in which they sought the necessary information, the same was refused, and hence the defects complained of were not cured.

3.

That the statute itself is patently defective in that it lacks sufficient clarity so as to apprise an offender or a would be offender of the specific act or acts that would constitute the crime or offense set forth in the statute.

4.

That the statute and the Bill of Information used words susceptible of various and sundry meaning and therefore were not sufficiently clear so that guilt could be ascertainable by an offender or a would be offender, and here your petitioners make particular reference to the words crowded and congregated.

5.

That in reference to all of the above and foregoing your petitioners, the defendants in this cause, show that the statute and the affidavit are therefore in violation of Article One Section Ten of the Constitution of the state of Louisiana and the Sixth Amendment to the Constitution of the United States.

6.

That there are statements patent upon the record of this cause made by this Honorable Court in connection with the rendition of its judgment to the effect that when colored people go into a white waiting room in a place like Shreveport, Louisiana, they have committed an act that is calculated to disturb and alarm the public.

7.

That the statement by this court to the effect set forth in the previous paragraph shows that this court found as a matter of fact that these defendants went into a white waiting room and thereby breached the peace, or caused a breach of the peace by their mere presence and for the court to so find is recognition by this court of, and is giving sanction to a policy of separation of races in public facilities under state law, under color thereof or in accordance with local custom and tradition, all in violation of the Equal

Protection and Due Process clauses of the Fourteenth Amendment to the Constitution of the United States.

8.

That in support of this Motion in Arrest of Judgment your petitioners wish to file herein a transcript of the ruling of this court both in connection with the defendants motion for a directed verdict and in connection with the findings of the court in reference to the defendant's guilt or innocence in this cause and that the same is annexed hereto and made part hereof, and which transcript shows that the ruling of the court on the question of guilt and in which the court made the statements aforesaid was timely excepted

WHEREFORE, YOUR PETITIONERS PRAY that their Motion in Arrest of Judgment be sustained as to each of these defendants and that all of the proceedings under the above and foregoing statute and/or Bill of Information be nullified and that further proceedings be suspended and PETITIONERS FURTHER PRAY in the alternative and in the alternative only that if for any reason this court should find this motion in arrest of judgment should not be sustained as to all of them, which is denied by all of your petitioners, then, and in such event, your petitioners pray that it be sustained as to such party or parties as the court shall deem entitled to such relief, and for all orders necessary and for general and equitable relief.

s/ JESSE N. STONE, JR.
Jesse N. Stone, Jr.
Attorney for Petitioners,
Defendants in this cause
854½ Texas Avenue
Shreveport, Louisiana

CERTIFICATE

I, Jesse N. Stone, Jr., do hereby certify that this Motion in Arrest of Judgment is filed in good faith, and is in my personal opinion, well grounded in law and in fact, and that the same is not filed for mere purpose of delay.

I further certify that a copy of the above and foregoing motion has been served on Honorable John A. Richardson, District Attorney in and for Caddo Parish, Louisiana.

DONE AND SIGNED THIS 23RD DAY OF AUGUST, A. D. 1961.

/s/ JESSE N. STONE, JR.
JESSE N. STONE, JR.

(Seal)

Motion for a New Trial

STATE OF LOUISIANA versus LEVERT H. TAYLOR, ET AL.	Number: 57,562 First Judicial District Court Caddo Parish, Louisiana

The defendants, LeVert H. Taylor. Delores McGinnie, Marie McGinnie, Harold L. Bethume, David James Dennis and Harry Blake, reserving all rights under any and all motions and/or exceptions previously filed herein, move the Court for a new trial herein for the following reasons, to wit:

1.

That as can be seen from the Bill of Information filed herein, and the ruling of the court in reference to the Bill of Particulars filed herein by these defendants David Dennis and Harry Blake had no way of knowing that testimony would be offered by the prosecution to show that they in any way aided and abetted the remainder of your defendants in their alleged unlawful acts.

2.

That David James Dennis and Harry Blake, along with the other defendants sought by Motion for a Bill of Particulars to ascertain the manner in which they allegedly violated the law and that the same was denied them.

3.

That David Dennis and Harry Blake were thus required to go to trial without knowing under what specific act or acts they were alleged to have committed in violation of the law.

4.

That the verdict of guilty rendered by this court as against all of the defendants is contrary to the law and the evidence, in that the evidence offered to the effect that the presence of four of these defendants in a white waiting room in Shreveport, Louisiana caused a Breach of the Peace, and the court's statements to the effect that the presence of colored people in a white waiting room in a place like Shreveport, Louisiana is an act calculated to disturb and alarm the public, present no legal basis to support a verdict of guilty, in that such evidence and findings by the court presuppose that the defendants had no lawful right to act in the manner that they did, and that this is contrary to the law of the state of Louisiana of the United States, and particularly the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States.

5.

That the verdict is against the law and the evidence particularly as the same applies to Delores McGinnie, Marie McGinnie, LeVert Taylor, David James Dennis and Harry Blake for the reason that the evidence does not show that any statement by any police officer was ever made to either of them that could be calculated to have been an order for them to move on or to disperse.

6.

That the evidence is without contradiction.

7.

That the Chief of Police of Shreveport, Louisiana directed his remarks and his order to Harold Bethume.

WHEREFORE, PETITIONERS PRAY that this Motion for New Trial be sustained and that a new trial be ordered by this court and that the verdict be set aside, and for all orders necessary and for general and equitable relief.

/s/ JESSE N. STONE, JR.
Jesse N. Stone, Jr.
Attorney for Petitioners
854½ Texas Avenue
Shreveport, Louisiana

CERTIFICATE

I, Jesse N. Stone, Jr., do hereby certify that this Motion for New Trial is filed in good faith, and is in my personal opinion well grounded in law and in fact, and that the same is not filed for mere purposes of delay.

I further certify that a copy of the above and foregoing motion has been served on Honorable John A. Richardson, District Attorney in and for Caddo Parish, Louisiana.

DONE AND SIGNED THIS 23RD DAY OF AUGUST, A. D. 1961.

/s/ JESSE N. STONE, JR.
JESSE N. STONE, JR.